

NEBRASKA DEPARTMENT
OF INSURANCE

MAR 25 2004

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
VICTOR B. YOUNG,)	
)	CAUSE NO. A-1530
)	
RESPONDENT.)	

This matter came on for hearing on the 11th day of March 2004, before Michael Boyd, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Christy Neighbors. Victor B. Young, ("Respondent"), was not present and was not represented by an attorney. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent was a licensed resident Nebraska insurance producer whose registered address with the Department is Falls City Insurance Center, 1201 Harlan Street, Falls City, Nebraska 68355, and whose registered home address is 1818 Burton Drive, Falls City, Nebraska 68355. Respondent's license expired on August 31, 2003. (Exhibit 2). However pursuant to Neb. Rev. Stat. §44-4059(5), the Director retains the authority for three years to enforce provisions of

and impose any penalty or remedy authorized by the Insurance Producers Licensing Act against any person ... even if the person's license or registration has been surrendered or lapsed by operation of law.

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about February 20, 2004 the Petition and Notice of Hearing were served upon the Respondent by mailing the same to his home address of record by certified mail, return receipt requested. On or about February 26, 2004 the return receipt card was returned to our office as evidenced by Exhibit #1.

4. On August 28, 2003 the Director of Insurance signed an Order in Cause No. A-1510, in which Respondent was required to pay an administrative fine of \$1,000 within thirty (30) days of the date of the Director's signature for violations of Neb. Rev. Stat. §§ 44-1525(11) and 44-4059(1)(b). Further, the Respondent was required to cooperate with the Department's Consumer Affairs Division inquiry into the Crystal Beal complaint by providing a written response to their request related to their investigation of that complaint. Although Respondent did provide a written response to the Consumer Affairs Division request related to their investigation of the Crystal Beal complaint, Respondent failed to pay the \$1,000 fine.

5. On December 29, 2003 the Director of Insurance signed an Order in Cause No. A-1522, in which Respondent was found to have violated Neb. Rev. Stat. §44-4059(1)(b) for failing to pay the \$1,000 fine levied against him by an order of the director issued on August 28, 2003 in Cause No. A-1510. Respondent was fined an additional \$1,000. That \$1,000 fine as well as the previous \$1,000 fine levied in A-1510, were to have been paid within thirty (30) days after the adoption by the director of the order in Cause No. A-1522. A review of the file in Cause No. A-

1522 revealed that neither of those fines have been paid as of the March 11, 2004 date of the hearing in this matter.

6. Respondent failed to comply with the Order issued in Cause No. A-1522.

7. During the course of the above-referenced administrative actions, a market conduct examination of Respondent was conducted at his office located at 1201 Harlan St., Falls City, Nebraska by Marilyn Meier. Ms. Meier is a Department Market Conduct Examiner with thirteen (13) years experience at the Department of Insurance. The exam was performed pursuant to Neb. Rev. Stat. §44-1527 and 44-5901 through 44-5910. The examination focused on insurance transactions involving Respondent over the last few years. A copy of that report is received as Exhibit 3.

8. Evidence received indicates that Debra Baker completed an application for homeowners insurance with Farmers Mutual Home Insurance Company of Hooper, Nebraska ("FMHIC") while at Respondent's agency, effective August 1, 2002 through August 1, 2003. (Exhibit 4). The mortgagee, First National Bank and Trust of Falls City, Nebraska ("First National") gave a check in the amount of \$513.00 from Baker's escrow account payable to FMHIC to Respondent based upon the copy of the insurance application it received for Debra Baker's insurance premium. (Exhibit 4). According to the testimony of Ms. Meier, Respondent deposited said check into his personal bank account at Richardson County Bank & Trust of Falls City, NE (Exhibit 4), and did not forward the insurance application or the \$513.00 premium to the insurer. When mortgagee First National hadn't received evidence from Respondent that the policy had been issued, it contacted the insurer. Ms. Meier testified that FMHIC had never received an application from Respondent. Ms. Baker eventually obtained homeowners insurance with FMHIC, and the insurer collected the necessary premium from Respondent by crediting the \$513.00 owed against Respondent's commissions. (Exhibit 3)

9. Evidence also indicates that Allen and Brenda Meyer applied through Respondent for homeowners insurance with FMHIC. Respondent bound coverage on January 24, 2002 and the mortgagee First National issued a \$236.00 check from the Meyer's escrow account payable to the Insurer and sent it to the Respondent. (Exhibit 5). According to the testimony of Ms. Meier, Respondent did not forward the binder or the premium check to FMHIC. When the binder expired, the mortgagee First National received a second binder from Respondent effective January 24, 2003. (Exhibit 5). Further the Respondent prepared a document that appeared to be a premium billing from FMHIC. (Exhibit 5). First National again issued a check from the Meyer's escrow account in the amount of \$226.00 payable to FMHIC and sent it to the Respondent. (Exhibit 5). According to the testimony of Ms. Meier, the Respondent again failed to forward the binder or insurance premium check to the insurer, and neither insurance premium check was ever cashed. Eventually, the Meyers were finally able to obtain homeowners insurance coverage effective March 28, 2003 with another insurer. (Exhibit 3)

10. Nancy Vogt also completed an application with Respondent for homeowners insurance with FMHIC to be effective August 28, 2002 through August 28, 2003. (Exhibit 6). Respondent bound coverage on August 28, 2002. Accordingly, the mortgagee Richardson County Bank & Trust of Falls City, Nebraska ("Richardson County Bank") issued a \$378.00 check from Vogt's escrow account payable to the insurer and sent it to Respondent. (Exhibit 6). However, according to Ms. Meier's testimony, Respondent did not forward the application or the premium check to FMHIC. Richardson County Bank didn't receive a copy of the homeowner insurance policy so it provided FMHIC with a copy of an insurance application that FMHIC never received from Respondent. (Exhibit 6). According to the testimony of Ms. Meier, the insurance premium check was never cashed. Eventually Ms. Vogt was finally able to obtain a homeowners insurance policy from FMHIC on April 16, 2003. (Exhibit 3)

11. Evidence further shows that Michael and Demetta Kuker also applied through Respondent for homeowners insurance with FMHIC to be effective August 30, 2002 through August 30, 2003. (Exhibit 7). Respondent bound coverage on August 30, 2002 and the mortgagee, Richardson County Bank, issued a \$469.00 check from Kuker's escrow account payable to the insurer and sent it to the Respondent. (Exhibit 7). However, according to Ms. Meier's testimony, Respondent did not forward the application or the premium check to the insurer. Richardson County Bank did not receive a copy of the homeowner insurance policy and then provided the insurer with a copy of the insurance application that FMHIC never received from Respondent. The insurance premium check was never cashed according to a May 20, 2003 letter from Richardson County Bank to FMHIC. (Exhibit 7). Eventually the Kukers were finally able to obtain a homeowners insurance policy from the insurer in May 2003. Richardson County Bank issued a replacement premium check from the Kuker's escrow account to FMHIC. (Exhibit 3)

12. During the testimony of the Department's market conduct examiner, Marilyn Meier, and as reflected in the Market Conduct Report (Exhibit 3) issued upon completion of the examination of the Respondent's conduct of insurance business over the last few years, it is clear that the Respondent's record keeping is minimal, if at all. The Department's ability to locate necessary financial information on Respondent's insurance business transactions is hindered as a result of poor record keeping. Additionally, the Department was not able to determine if insurance coverage was issued for his other clients. Upon examination, Ms. Meier's testimony indicates that he lacked knowledge about the insurance status of his various clients. Finally, the Respondent had closed out his financial accounts, thus further impeding efforts to locate funds that had been provided to Respondent by various clients through their mortgagee.

CONCLUSIONS OF LAW


1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.
2. The Department has personal jurisdiction over Respondent.
3. The Respondent violated Neb. Rev. Stat. §44-4059(1)(b) by failing to pay the administrative fine when due.
4. The Respondent violated Neb. Rev. Stat. §44-4059(1)(d) by improperly withholding, misappropriating, or converting any money received in the course of doing insurance business.
5. The Respondent violated Neb. Rev. Stat. §44-4059(1)(h) in four (4) separate instances. Neb. Rev. Stat. §44-4059(1)(h) provides that the director may revoke or suspend an insurance producer's license and/or impose a fine if an insurance producer has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state. Several clients of Respondent lacked insurance coverage for significant amounts of time due to Respondent's failure to submit their insurance applications and premiums to the insurance company.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's insurance license be revoked. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department of Insurance to make application for such further orders as may be necessary.

Dated this 25th day of March 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Michael Boyd, Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of *State of Nebraska Department of Insurance v. Victor B. Young*, Cause No. A-1530.

Dated this 25th day of March 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at 1818 Burton Drive, Falls City, Nebraska 68355 by certified mail, return receipt requested on this 26th day of March 2004.

